

DECISION

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**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-203007**DATE:** October 9, 1981**MATTER OF:** Ignacio J. Pangelinan - Real Estate
Expenses - Transfer from Overseas Duty
Station**DIGEST:**

Civilian employee of Department of Army who transferred from overseas post at Donnerberg, Germany, to Lathrop, California, is not entitled to reimbursement of real estate expenses since both stations are not in the United States as required by 5 U.S.C. § 5724a(a)(4). Employee's contention regarding return rights under 10 U.S.C. § 1586 is not supported by the administrative record and is not material to disposition of the claim.

Mr. Ignacio J. Pangelinan, a civilian employee of the Department of the Army, has requested reconsideration of our Claims Group's adjudication of March 31, 1981, disallowing his claim for reimbursement of real estate expenses incurred in the sale of a residence on Guam and the purchase of a residence in California incident to his transfer to Sharpe Army Depot, Lathrop, California. While Mr. Pangelinan indicates disagreement with the denial determination of our Claims Group, he points to no factual error and has cited no legal precedent which would indicate a mistake of law. Thus, on the basis of the administrative record before us, we are sustaining our Claims Group's action.

The record shows that Mr. Pangelinan's official duty station from October 14, 1976, until May 8, 1978, was at the Defense Communications Station in Donnerberg, Germany, from which he transferred in June 1978, to the Sharpe Army Depot in Lathrop, California. In connection with this transfer Mr. Pangelinan sold a house he owned on Guam in November 1978, and purchased a house in Manteca, California, in March 1979. Under these facts, Mr. Pangelinan sought reimbursement for real estate transaction expenses.

Section 23 of Public Law 89-516, 80 Stat. 323, July 21, 1966, now codified in 5 U.S.C. § 5724a (1976), authorizes reimbursement of certain expenses associated with the sale

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or purchase of a residence incident to an employee's transfer of official station. The statute states that:

"(a) * * * appropriations or other funds available to an agency for administrative expenses are available for the reimbursement of all or part of the following expenses of an employee for whom the Government pays expenses of travel and transportation under section 5724(a) of this title:

* * * * *

"(4) Expenses of the sale of the residence * * * of the employee at the old station and purchase of a home at the new official station required to be paid by him when the old and new official stations are located within the United States, its territories or possessions * * *." (Underscoring supplied.)

Paragraph 2-6.1 of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973), provides:

"Conditions and requirements under which allowances are payable. To the extent allowable under this provision, the Government shall reimburse an employee for expenses required to be paid by him in connection with the sale of one residence at his old official station, for purchase (including construction) of one dwelling at his new official station * * * Provided, That:

"a. * * * A permanent change of station is authorized or approved and the old and new official stations are located within the 50 States, the District of Columbia, the territories and possessions of the United States, the Common Wealth of Puerto Rico, or the Canal Zone * * *." (Underscoring supplied.)

Consistent with the limiting language of this section, paragraph C14000-1 of the Joint Travel Regulations, Volume 2, prohibits such payments to employees transferred from a duty post outside the United States.

Our Claims Group denied Mr. Pangelinan's claim under this controlling legal analysis. For decisions of this Office supporting this well-settled legal proposition see Army Corps of Engineers, B-194423, March 31, 1980, and Jack E. Wells, B-169490, October 9, 1975, affirmed, February 3, 1976.

In accordance with regulations concerning the claims settlement authority of this Office set out at Part 31, title 4, Code of Federal Regulations, we are always willing to review and reconsider our Claims Settlements if a material mistake of fact or law is alleged and proven. See 4 C.F.R. § 32 (1981). Here however, no evidence has been offered to show that our Claims Group's adjudication involved any mistake of fact, nor are legal authorities or precedents cited to support any error of law. Rather, Mr. Pangelinan frames his requests for reconsideration as follows:

"I wholeheartedly agree with your interpretation of Section 2-6-1 of the Federal Travel Regulations. However, my main contention is that I was not given return rights when I left Guam for employment with the US Army on Okinawa. The disparity is in the regulations that govern return rights and not the FTR. Federal employees on Guam are not given return rights when they depart for employment at DOD activities overseas. In contrast, federal employees in the fifty states are given return rights to the activity they depart from when accepting a position overseas."

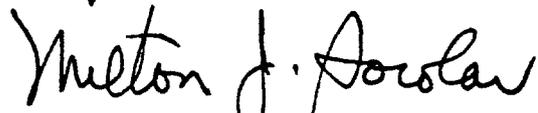
On the basis of the record before us we must conclude that Mr. Pangelinan's contention set out above is not material to the determination of his entitlement to real estate transaction expenses.

Under 10 U.S.C. § 1586, a program has been established within the Department of Defense for the benefit of personnel transferring overseas whereby such employees have a right to return to their old position after satisfactory completion of their overseas tour of duty. Under usual conditions, an employee who transfers overseas with reemployment rights

at his old station is not affected by the lack of real estate benefits. However, section 1586(b)(1) invests the Secretary of each military department with authority to prescribe regulations for operating a program of rotation for civilian employees which provides for the granting of the right to return to a position in the United States to each civilian employee in the department concerned who, "while serving under a career-conditional or career appointment in the competitive civil service, is assigned at the request of the department concerned to duty outside the United States, * * *." (Emphasis added.)

Since the record shows that Mr. Pangelinan was employed by the Department of the Navy while on Guam, and left Guam for employment with the Department of the Army on Okinawa at his own request, we are unpersuaded as to the alleged disparity in the application of the statute.

Thus, on the basis of the record before us, Mr. Pangelinan's allegation of unlawful or arbitrary and capricious conduct on the part of responsible Government officials in administering the discretionary authority provided in 10 U.S.C. § 1586 does not form the basis of a claim which may be adjudicated by this Office. This Office is without authority to order or allow that which the law does not permit. Accordingly, the Claims Group's denial of Mr. Pangelinan's claim is sustained.



Acting Comptroller General
of the United States